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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 *In re*

12 Application of
13 SHAHROKH MIRESKANDARI,
14 Applicant,

15
16 RE APPEAL IN THE:
17 HIGH COURT OF JUSTICE,
18 QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT,
LONDON ENGLAND

19 SHAHROKH MIRESKANDARI,
20 Appellant.

21 SOLICITORS REGULATION
22 AUTHORITY,

23 Respondent.
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CASE NO. CV 12-10310 DSF (Ex)

**OPPOSITION TO EX PARTE
APPLICATION TO EXPEDITE
RESOLUTION OF 28 U.S.C. § 1782
APPLICATION; DECLARATION
OF MARK T. DROOKS IN
SUPPORT THEREOF**

Assigned to Hon. Dale S. Fischer

MEMORANDUM OF POINTS AND AUTHORITIES

**I. APPLICANT IS IMPROPERLY ATTEMPTING TO CIRCUMVENT
THIS COURT'S PROCEDURES.**

Applicant Shahrokh Mireskandari's *ex parte* application seeks relief from this Court that is improper, unnecessary, duplicative, and wasteful of this Court's resources. Specifically, Mireskandari requests this Court to allow him to serve a subpoena on Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg, P.C. ("Bird Marella") pursuant to 28 U.S.C. section 1782 and set a briefing and hearing schedule for any subsequent motion to quash. The relief sought here is identical to the relief sought by a prior *ex parte* application that Mireskandari made in this proceeding and that remains pending before this Court. By filing the instant *ex parte* application, Applicant is improperly attempting to "jump the gun" and asking this Court to ignore the papers already filed and summarily grant the relief sought in the prior application.

Moreover, the instant proceeding is materially related to a previously-filed case in the Central District before the Honorable Judge Margaret M. Morrow (the "Morrow Action"), and Respondent Solicitors Regulation Authority ("SRA") has filed a Notice of Related Case that is currently pending before Judge Morrow. Declaration of Mark T. Dooks ("Dooks Decl."), ¶ 2, Ex. A. Applicant Mireskandari is a plaintiff in the Morrow Action and has named the SRA as a defendant. *Id.* Bird Marella serves as counsel for the SRA in the Morrow Action, and Mireskandari has also claimed that Bird Marella is a relevant witness in that action. *Id.* In the Morrow Action, Mireskandari and his co-plaintiff, Paul Baxendale-Walker, have alleged a conspiracy by the SRA and others with respect to the UK disciplinary proceedings against plaintiffs that is also the subject of the instant proceeding. *Id.*

Applicant initiated this proceeding in order to seek this Court's permission—via an *ex parte* application—to serve a subpoena for documents on Bird Marella,

1 counsel for the SRA, under 28 U.S.C. section 1782, purportedly for use in an appeal
2 in the United Kingdom (“Section 1782 Application”). *See* Dkt. No. 1. The SRA
3 filed its opposition to the Section 1782 Application on December 5 (Dkt. No. 11),
4 and Mireskandari filed a reply on December 7. Dkt. No. 16. Applicant’s Section
5 1782 Application is therefore fully briefed and remains pending before this Court.
6 In the papers, the parties addressed the factual and legal issues relating to the
7 propriety of service of a subpoena on Bird Marella, including points of applicable
8 UK law and the various discretionary factors this Court must evaluate under *Intel*
9 *Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004) in deciding an
10 application under section 1782.

11 Applicant, however, now asks this Court to allow service of a subpoena on
12 Bird Marella without consideration of the fully-briefed papers initiated by Applicant
13 himself. Applicant also had filed previously a request for oral argument which is
14 pending before this Court (Dkt. No. 15), and seeks the same relief here. Applicant
15 essentially requests a shortcut to granting the relief he seeks without any
16 demonstration that he has met the requirements for relief. The law does not allow
17 for such shortcuts. Service of the subpoena is proper only if this Court considers
18 and grants the Section 1782 Application, and at that time, the Court may set a
19 briefing schedule for subsequent motion to quash as it deems appropriate.

20 **II. APPLICANT HAS INITIATED THIS PROCEEDING IN BAD FAITH.**

21 The *ex parte* relief sought by Mireskandari here is particularly unwarranted
22 given that Mireskandari has initiated this proceeding in apparent bad faith.
23 Mireskandari has brought serious accusations against Bird Marella, alleging that it
24 engaged in improper and fraudulent conduct in its communications with Dr. Scoma,
25 but provides no factual basis for the allegations. Indeed, the bulk of the allegations
26 in Mireskandari’s Section 1782 Application involve alleged communications that
27 occurred without Bird Marella present. With respect to Bird Marella, Mireskandari
28 merely alleges that Bird Marella represented Dr. Scoma with respect to a third-party

1 subpoena in a state court action brought by another disbarred UK solicitor (which
2 was later voluntarily withdrawn), long after Dr. Scoma had completed his
3 involvement in Mireskandari's disciplinary proceedings. Section 1782 App. (Dkt.
4 No. 1) at 9; Resp.'s Opp. (Dkt. No. 11) at 5, 8.

5 Not only is the discovery sought from Bird Marella unwarranted, but counsel
6 for Mireskandari has also indicated that Mireskandari is attempting to serve Bird
7 Marella with a subpoena in this proceeding in order to be able to make the argument
8 that the service of the subpoena would create a conflict with Bird Marella's
9 representation of the SRA. Dooks Decl., ¶ 3, Ex. B. And given Mireskandari's
10 apparent belief that service of the subpoena on Bird Marella would create a conflict,
11 there is yet another reason to defer serving the subpoena until the Court has
12 determined that the discovery pursuant to section 1782 is appropriate.

13 Mireskandari therefore is seeking broad discovery from Bird Marella based
14 on bare allegations of fraud that are clearly without basis and with the intention of
15 creating a purported conflict with respect to Bird Marella's representation of the
16 SRA. This Court has full discretion to deny applications under Section 1782 that
17 are brought in bad faith or for the purpose of harassment, and should deny
18 Mireskandari's application here on that basis. *Euromepa S.A. v. R. Esmerian, Inc.*,
19 51 F.3d 1095, 1101 n.6 (1995) (" if the district court determines that a party's
20 discovery application under section 1782 is made in bad faith, for the purpose of
21 harassment, or unreasonably seeks cumulative or irrelevant materials, the court is
22 free to deny the application in toto, just as it can if discovery was sought in bad faith
23 in domestic litigation.").¹

24 _____
25 ¹ Moreover, as Applicant has noted, the Southern District of California has granted
26 Mireskandari's section 1782 application to serve a subpoena for deposition
27 testimony and documents on Dr. Scoma. See Dkt. No. 17. Since Applicant has
28 already been granted leave to seek deposition testimony and documents from Dr.
Scoma himself, any discovery sought from Bird Marella would be cumulative and

1 **III. CHEVRON IS INAPPOSITE.**

2 Applicant relies on *In re Application of Chevron Corp.*, No. 10cv1146-
3 IEG(WMc), 2010 WL 3584520 (S.D. Cal. Sept. 10, 2010), but *Chevron* is
4 inapposite. In that case, Chevron initially filed an application under section 1782
5 attaching proposed, unsigned subpoenas and served the application on the
6 witness. *Chevron*, 2010 WL 3584520, at *1. The magistrate held a telephonic
7 status conference, and set a timetable for the respondent to file a motion to
8 quash. *Id.* After the respondent argued that the subpoenas were not properly
9 served, Chevron served signed copies of the subpoenas. *Id.* After Chevron's
10 application was granted, the respondent appealed to the District Judge and objected
11 to service of the subpoenas as improper, but did not object to the briefing schedule
12 set by the Magistrate. *Id.* at *6-7. The briefing schedule therefore was not an issue
13 on appeal, and the District Judge did not address its propriety. Nothing in the
14 *Chevron* case indicates that a truncated briefing schedule would be appropriate
15 here.²

16 **IV. CONCLUSION**

17 For the foregoing reasons, Respondent Solicitors Regulation Authority
18 respectfully urges the Court to deny Applicant's *Ex Parte* Application to Expedite
19 Resolution of 28 U.S.C. Section 1782 Application.

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harassing.

25 ² In granting the discovery sought, the *Chevron* court noted the fact that the
26 foreign court had considered evidence obtained from Chevron's previous section
27 1782 applications and was explicitly holding the record open for any further
28 discovery obtained from Chevron's pending applications. *Chevron*, 2010 WL
3584520, at *4. This is not the case here.

1 DATED: December 24, 2012

Respectfully submitted,

2 Mark T. Dooks

3 BIRD, MARELLA, BOXER, WOLPERT,
4 NESSIM, DROOKS & LINCENBERG, P.C.

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6 By: /s/ Mark T. Dooks

7 Mark T. Dooks

8 Attorneys for Respondent Solicitors
9 Regulation Authority
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DECLARATION OF MARK T. DROOKS

I, Mark T. Drooks, declare as follows:

1. I am an active member of the Bar of the State of California and a Principal with Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg, A Professional Corporation, attorneys of record for Respondent Solicitors Regulation Authority ("SRA") in this action. I make this declaration in support of Respondent's Opposition To Ex Parte Application to Expedite Resolution Of 28 U.S.C. Section 1782 Application. Except for those matters stated on information and belief, I make this declaration based upon personal knowledge and, if called upon to do so, I could and would so testify.

2. The instant proceeding is materially related to a pending case in the Central District before the Honorable Judge Margaret Morrow, entitled *Mireskandari, et al. v. Mayne, et al.*, Case No. CV 12-03861 MMM (FMOx) (the "Morrow Action"). Attached as **Exhibit A** is a true and correct copy of the Notice of Related Case filed on December 20, 2012 by Respondent Solicitors Regulation Authority that is currently pending before Judge Morrow. Applicant Mireskandari is a plaintiff in the Morrow Action and has named the SRA as a defendant; Bird Marella serves as counsel for the SRA in that action. Mireskandari has also claimed that Bird Marella is a relevant witness in that action. In the Morrow Action, Mireskandari and his co-plaintiff, Paul Baxendale-Walker, have alleged a conspiracy by the SRA and others with respect to the UK disciplinary proceedings against plaintiffs that is also the subject of the instant action.

3. Attached as **Exhibit B** is a true and correct copy of an email sent by Bruce Marks to me dated December 20, 2012 and my December 21, 2012 response to Bruce Marks' December 20, 2012 email.

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that I executed this declaration
3 on December 24, 2012, at Los Angeles, California.

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5 /s/ Mark T. Drooks
6 Mark T. Drooks
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EXHIBIT A

1 Mark T. Dooks - State Bar No. 123561
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2 Jessica S. Chen - State Bar No. 265943
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6 Attorneys for Defendants Barrington
7 Mayne, Malcolm Lees, David Middleton,
Anthony Townsend, Richard Hegarty, the
8 Solicitors Regulation Authority and The
Law Society of England and Wales
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
12

13 SHAHROKH MIRESKANDARI, and
14 PAUL BAXENDALE-WALKER,

15 Plaintiffs,

16 vs.

17 BARRINGTON MAYNE, MALCOLM
LEES, DAVID MIDDLETON,
18 ANTONY TOWNSEND, RICHARD
HEGARTY, THE LAW SOCIETY OF
19 ENGLAND AND WALES, PATRICK
ROHRBACH, THE SOLICITORS
20 REGULATION AUTHORITY,
MANSUR RAHNEMA,
21 ASSOCIATED NEWSPAPERS LTD;
DAVID GARDNER; and DOES 1 to
22 100, inclusive,

23 Defendants.
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CASE NO. CV 12-03861 MMM
(FMOx)

NOTICE OF RELATED CASES
[Local Rules 83-1.3.1 & 83-1.3.3]

Assigned to Hon. Margaret M. Morrow

1 TO THIS COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
2 RECORD, PLEASE TAKE NOTICE that:

3 1. On December 3, 2012, Plaintiff Shahrokh Mireskandari initiated a civil
4 action pursuant to 28 U.S.C. section 1782 in the United States District Court for the
5 Central District of California, entitled *In Re Application of Shahrokh Mireskandari*,
6 No. 2:12-CV-10310 DSF (Ex) (“Petition”), to seek the production of documents
7 from Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg, P.C. (“Bird
8 Marella”). Bird Marella serves as counsel for Defendants Barrington Mayne,
9 Malcolm Lees, David Middleton, Anthony Townsend, Richard Hegarty, the
10 Solicitors Regulation Authority and the Law Society of England and Wales in this
11 Action. Plaintiffs Mireskandari and Paul Baxendale-Walker have also claimed that
12 Bird Marella is a relevant witness in this action. *See* Third Amended Compl. (Dkt.
13 No. 69), ¶ 138.¹

14 2. The Petition is materially related to the instant lawsuit. The action
15 seeks discovery from counsel for the SRA in these actions, in connection with an
16 alleged conspiracy against Plaintiffs that is the subject of the complaint in this
17 lawsuit. Specifically, Mireskandari seeks evidence relating to the proceedings in the
18 United Kingdom that resulted in Mireskandari’s disbarment and communications
19 between Bird Marella and a witness in that proceeding. That witness, Dr. Joseph
20 Scoma, is identified in the Third Amended Complaint as a witness in this action
21 (and effectively as a participant in the alleged conspiracy). *See* Third Amended
22 Compl. (Dkt. No. 69), ¶¶ 117-38. The topics of the discovery sought in the Petition

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24 ¹ On December 3, 2012, Mireskandari initiated another civil action pursuant to 28
25 U.S.C. section 1782 in the United States District Court for the Southern District of
26 California, entitled *In re Application of Shahrokh Mireskandari*, No. 3:12-CV-2865
27 IEG (DHB) (“Southern District Petition”), to seek deposition testimony and
28 documents from Dr. Joseph A. Scoma. Plaintiffs named Defendant Solicitors
Regulation Authority (“SRA”) as the respondent in that matter and have claimed
that Dr. Scoma is a relevant witness in this action.

1 involve the same subject matter as the instant lawsuit (i.e., whether Mireskandari
2 was properly disbarred as a solicitor in the United Kingdom). The Petition therefore
3 arises from related transactions, happenings, and/or events as this lawsuit and call
4 for a determination of the same or substantially identical questions of law and fact.
5 Local Rule 83-1-3.1(a)-(b).

6
7 DATED: December 20, 2012 Mark T. Dooks
8 Jessica S. Chen
9 BIRD, MARELLA, BOXER, WOLPERT,
10 NESSIM, DROOKS & LINCENBERG, P.C.

11
12 By: /s/ Mark T. Dooks
13 Mark T. Dooks
14 Attorneys for Defendants Barrington
15 Mayne, Malcolm Lees, David Middleton,
16 Anthony Townsend, Richard Hegarty, the
17 Solicitors Regulation Authority and the
18 Law Society of England and Wales
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EXHIBIT B

Jessica Chen

From: Mark T. Dooks
Sent: Friday, December 21, 2012 11:49 AM
To: Bruce Marks
Cc: cpalko@blechercollins.com; jludwig@blechercollins.com; Maria Temkin; Tom Sullivan; Maxwell M. Blecher; Jessica Chen
Subject: RE: CD Cal

Bruce,

Service of a subpoena would be premature until we have a ruling from the Court on the pending ex parte application. If the Court allows the discovery to proceed, my firm will accept service of the subpoena.

I see no point in responding to the second paragraph of your email.

Mark

From: Bruce Marks [<mailto:marks@mslegal.com>]
Sent: Thursday, December 20, 2012 7:37 PM
To: Mark T. Dooks
Cc: cpalko@blechercollins.com; jludwig@blechercollins.com; Maria Temkin; Tom Sullivan; Maxwell M. Blecher
Subject: CD Cal

Dear Mark:

In light of SD Cal ruling, we did not file the ex parte in CD Cal regarding expedited resolution today. Given the ruling, please advise whether SRA will consent to any of the proposed relief set forth in my prior email. It would seem sensible for the SRA to consent to serving the subpoena on Bird Marella, providing for 14 days to move to quash/object, and agreeing to a briefing schedule for any motion to quash and/or objections.

Again, I raise this, reserving the obvious point that your firm is conflicted in advising the SRA and responding to the proposed subpoena. I also note the obvious point that the SRA should be seeking to determine the truth, not suppress it.

Cheers.